

(Draft - Awaiting Formal Approval)

**MINUTES OF THE
ETHICS INTERIM COMMITTEE**

Wednesday, August 19, 2009 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Sen. Sheldon L. Killpack, Senate Chair
Sen. Patricia W. Jones, Senate Cochair
Rep. John Dougall, House Chair
Rep. Rebecca Chavez-Houck, House Cochair
Rep. Tim M. Cosgrove
Rep. Brad L. Dee
Rep. Kevin S. Garn
Sen. Scott K. Jenkins
Rep. Brian S. King
Rep. Bradley G. Last
Sen. Karen Mayne

Sen. Scott D. McCoy
Rep. Carol Spackman Moss
Sen. Ross I. Romero
Sen. Dennis E. Stowell
Sen. John L. Valentine

Staff Present:

John Q. Cannon, Managing Policy Analyst
John L. Fellows, General Counsel
Eric N. Weeks, Deputy General Counsel
Chelsea Barrett, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Killpack called the meeting to order at 9:10 a.m.

MOTION: Sen. McCoy moved to approve the minutes of the June 17, 2009 meeting. The motion passed unanimously with Sen. Jones and Sen. Mayne absent for the vote.

2. The Honorable Rob Bishop, U.S. House of Representatives, First District

Chair Killpack introduced Congressman Rob Bishop, U.S. House of Representatives, and thanked him for accepting the Committee's invitation to speak about Congress' ethics procedures.

Congressman Bishop explained his appointment to the ethics pool, which is composed of 10 to 20 Representatives who support the U.S. House of Representatives Standards of Official Conduct Committee by serving on investigation boards, subcommittees, or other needs as directed. In his experiences with ethics committees, he noted the fundamental issue of political "games" compromising the integrity of the ethics process.

Congressman Bishop noted four main issues to consider when researching ethics reform: (1) the potential of political abuse in ethics procedures; (2) the challenge of devolving responsibilities to subcommittees or other groups unaffiliated with the Legislature; (3) the complications involving regulating versus disclosing information; and (4) the challenge of assuring that the rules associated with ethics procedures are logical and do not have unintended consequences.

Sen. Jenkins inquired whether disclosure is satisfactory in ethics procedures. Congressman Bishop noted that disclosure may be the better alternative because with regulation there always seems to be a way to interpret the rules and make exceptions.

Sen. Romero inquired about community participation in the congressional ethics subcommittees. Congressman Bishop noted that he is not familiar with any community participation in the ethics procedures that were recently implemented.

Rep. King asked about the regulatory versus disclosure models. Congressman Bishop explained that Congress has the tendency to regulate more than allow people to make decisions based on the disclosure of information.

Chair Killpack commented that the ethics procedures today require elected officials to be accountable to voters. He inquired about Congressman Bishop's experience with commissions. Congressman Bishop noted that the power and authority of the staff is very important to ethics commissions. He explained that rotation of staff involvement is a good solution to ensure corruption does not occur. Congressman Bishop explained that Congress often shifts the decision-making responsibility onto other groups, which creates larger issues because responsibilities are devolved. He added that this practice makes constituent involvement and participation difficult.

Rep. Dougall inquired about the congressional advisory committee. Congressman Bishop explained that the advisory committee considers potential unethical issues that are submitted for review and grants permission based on the standards that are in place.

3. Utah State Bar Ethics Commission Process

Mr. Art Berger, former Chair, Utah Supreme Court Ethics and Discipline Committee, explained his background and experience with Utah law. He explained, that similar to legislators, lawyers need ethical standards and disciplinary procedures in their practice. He explained that the Utah Supreme Court Ethics and Discipline Committee is trusted to regulate and police ethical behaviors for lawyers in the State of Utah.

Mr. Berger explained that the Utah State Bar's ethical behaviors and disciplinary procedures are clearly outlined in the "Utah Rules of Lawyer Discipline and Disability." He further explained the composition of the Committee, which is composed of 34 members from diverse geographical locations, backgrounds, and legal expertise. He noted that the Committee includes both lawyers and public members.

Mr. Berger informed the Committee that, besides a disciplinary committee, the Office of Professional Conduct also educates lawyers through an inquiry hotline that is available for guidance and counseling, as well as continuing education seminars and classes informing lawyers on recent ethics law changes.

Rep. Dougall questioned why the screening panels proceedings are private. Mr. Berger noted, that in most situations, the cases are best kept private because there are no substantial ethical issues that are immediately apparent. Rep. Dougall further inquired whether it is appropriate to have attorneys judging attorneys. Mr. Berger explained that the goal is to create an atmosphere where both sides are respected, heard, and understood. He explained that the composition of the panel is to provide transparency in the procedure.

Rep. Cosgrove inquired about transparency in ethics procedures. Mr. Berger noted that because the Legislature is composed of elected officials and is of public concern and inquiry, the ethics proceeding for the Legislature might include different criteria and be addressed under different proceedings than the Utah State Bar.

Rep. Chavez-Houck inquired about the ratio of public members to lawyers on the panel. Mr. Berger noted that a quorum must be present at all meetings, which constitutes at least two lawyers and one public member.

4. Constitutionality of Independent Ethics Commissions - Recent Nevada Supreme Court Decision

Mr. Fellows reviewed the recent Nevada Supreme Court decision in *The Commission on Ethics of the State of Nevada Appellant, vs. Warren B. Hardy II*, which was distributed to the Committee before the meeting. He explained that the opinion helps to answer questions the Committee had raised about the constitutionality of independent ethics commissions. Mr. Fellows explained that, although this is not a Utah case, Utah courts would most likely use this decision as a model because of the similarities between the two states in rules and procedures.

Sen. McCoy inquired about language in the opinion, which indicated that each house must punish its own members. He inquired whether there is a distinction between "punishment" and "investigation." Mr. Fellows explained that, in his reading of the opinion, he concluded that each house would have jurisdiction over the process and punishment of its own members.

5. Discussion of Utah Legislative Ethics Committee Membership, Jurisdiction, and Powers

Mr. Fellows distributed "Current Ethics Process Rules" and noted that the Legislature's Joint Rules involving ethics might be of interest to the Committee. He referred the Committee to "Rules of the Fifty-Seventh Legislature, Joint Rule 6, Parts 1 and 2," which was distributed to the Committee before the meeting. Mr. Fellows discussed the existing rules, questions to consider, and staff comments pertaining to Utah's legislative ethics committee membership, jurisdiction, and powers.

6. Other Items / Adjourn

MOTION: Sen. McCoy moved to adjourn the meeting. The motion passed unanimously with Sen. Jones and Sen. Mayne absent for the vote.

Chair Killpack adjourned the meeting at 10:40 a.m.